

RALPH PAGE

IBLA 75-191

Decided March 31, 1975

Appeal from decision of Oregon State Office, Bureau of Land Management, declaring mining claims null and void ab initio.

Set aside and remanded.

1. Hearings -- Mining Claims: Determination of Validity -- Mining Claims: Hearings -- Mining Claims: Lands Subject to -- Mining Claims: Relocation -- Withdrawals and Reservations: Power Sites -- Withdrawals and Reservations: Revocation and Restoration

In connection with a mining claim located on land withdrawn for reclamation and power purposes, where (1) no notice of location was filed during a later period in which the land was open for entry subject to 30 U.S.C. §§ 621, 623-24 (1970), (2) there are no intervening rights, (3) a claimant alleges that he held and worked the land, while open to entry, for the requisite number of years under 30 U.S.C. § 38 (1970) and the applicable state statute of limitations, and (4) he alleges that a discovery of a valuable mineral deposit has been made, it is necessary to consider the effect of § 621 et seq., and to hold a hearing if required to resolve questions of fact.

APPEARANCES: Harold Banta, Esq., Banta, Silven, Young & Marlette, Baker, Oregon, for appellant.

OPINION BY ADMINISTRATIVE JUDGE GOSS

Ralph Page appeals from a decision of the Oregon State Office, Bureau of Land Management, dated September 12, 1974, declaring two

placer mining claims null and void ab initio because the claims are within an area which was withdrawn for reclamation and power purposes at the times the claims were located.

The Stud Creek placer, located July 15, 1961, and the Sunshine placer located July 20, 1961, are situated in sections 27 and 33 of T. 3 S., R. 49 E., Will. Mer., Oregon. The land is within an area which was withdrawn February 12, 1952, under first form reclamation withdrawal for the Hell's Canyon Reclamation Project. A Federal Power Commission order of withdrawal for proposed project 2243 was imposed on these sections on March 31, 1958. The order of February 12, 1952, withdrawing lands for reclamation purposes, was revoked as to the lands in question by Public Land Order 2734 of July 19, 1962. Public Land Order 2734 specified that the lands withdrawn for power purposes are subject to the Act of August 11, 1955, 69 Stat. 682, 30 U.S.C. § 621 (1970), which provides in part for the filing of a notice of location in the appropriate land office.

The State Office decision holds that restoration did not validate the subject claims. The decision further stated that the land is embraced in application OR 11258, filed August 10, 1973, for proposed withdrawal of the Snake River Corridor, and the withdrawal application segregates the land from mining and other appropriation of land under 43 CFR 2351.3.

Appellant asserts that the sole basis for the State Office holding is his failure to file new or amended location notices after the withdrawal was vacated, and while the land remained open, reaffirming his intention to claim the land for mining. Appellant contends that his continued occupancy, his working of the claims, and his filing each year of a statutory form of proof of performance of annual labor, operate to reaffirm his continued intention to hold, develop and work the claim just as effectively as would an amended or relocation notice.

Appellant argues that under R.S. § 2332, 30 U.S.C. § 38 (1970), the filing of any new or further location notices are unnecessary. Section 2332 provides:

Where such person or association, they and their grantors, have held and worked their claims for a period equal to the time prescribed by the statute of limitations for mining claims of the State or Territory where the same may be situated, evidence of such possession and working of the claims for such period shall be sufficient to establish a right to a patent * * *.

The statute of limitations applicable to unpatented mining claims in Oregon is the same as with respect to other real property, i.e., 10 years. See ORS 12.050. The land was restored to entry on July 19, 1962, and remained subject to entry and mineral location until August 10, 1973, a period of more than 11 years. Appellant states that his continued possession and occupancy and his performance of the annual assessment work each year during that period, operated to perfect his title at the expiration of the 10-year period, on July 19, 1972, more than one year before the land was again withdrawn from mineral location.

Appellant also states that he should have been allowed a hearing, the State Office decision being a summary determination made without initiation of any formal contest proceedings, and without notice or opportunity to be heard. Appellant stresses that such a procedure is justified only where the mining claim is void upon its face, and incapable of being made valid under any circumstance, so that no issue of fact could be presented.

[1] It is clear there can be no location for minerals on land which has been withdrawn from mineral entry for first form reclamation purposes. 43 CFR 2091.1; 43 CFR 2322.1-1. Neither can R.S. § 2332, supra, create any rights to a mining claim against the United States where the land is not open to entry. If, however, the land becomes open for entry under the mining laws, and in the absence of any intervening rights, a new location is not essential under section 2332 where the lands are held and worked for the requisite number of years under the state statute of limitations while the land is open for entry, and where discovery of a valuable mineral deposit is shown. Judson v. Herrington, 71 Cal. App. 2d 565, 162 P.2d 931 (1945); Gardner C. McFarland, 8 IBLA 56 (1972); Meritt N. Barton, 6 IBLA 293, 304, 79 I.D. 431A, 436 (1972).

The land in question was open to mineral location from July 19, 1962, the date on which Public Land Order 2734 restored it to entry, until August 10, 1973, the date on which withdrawal application OR 11258 was filed. The time period alleged is more than adequate to satisfy the 10-year statute of limitations in Oregon. R.S. § 2332, however, does not dispense with the necessity of a valid discovery. Cole v. Ralph, 252 U.S. 286, 307 (1919); Harry A. Schultz, 61 I.D. 259 (1953). Since appellant asserts compliance with the statute of limitations time requirement of section 2332 and alleges that he has made discoveries on the claims, the Bureau of Land Management should determine whether such allegations are correct and also whether appellant has met the requirements of the mining laws in general. United States v. Guzman, 18 IBLA 109, 81 I.D. (1974); Ed Wuilliez, 12 IBLA 265 (1973); Harry A. Schultz, supra, at 263. In this connection, appellant should be given the opportunity to present written or oral argument as to the effect of 30 U.S.C. §§ 621, 623-24 (1970); MacDonald v. Best,

186 F. Supp. 217 (1960); and B. E. Burnaugh, 67 I.D. 366 (1960). As to any factual matters required to be resolved before presentation of any further appeal to this Board, appellant is to be given a hearing and allowed to present evidence. ^{1/} Cf. Meritt N. Barton, *supra*.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the State Office is set aside and the case is remanded for further proceedings.

Joseph W. Goss
Administrative Judge

We concur:

Douglas E. Henriques
Administrative Judge

Frederick Fishman
Administrative Judge

^{1/} It is noted the Forest Service originally requested that a contest be initiated.

